

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-4016**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DEMAUL CORTEZ SIMMONS, a/k/a Raider,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Charleston. David C. Norton, District Judge. (CR-02-653)

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Submitted: August 20, 2004

Decided: September 14, 2004

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Before WIDENER, MOTZ, and SHEDD, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Parks N. Small, Federal Public Defender, Columbia, South Carolina, for Appellant. J. Strom Thurmond, Jr., United States Attorney, Carlton R. Bourne, Jr., Assistant United States Attorney, Charleston, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Demaul Cortez Simmons appeals from the order of the district court denying his motion to suppress evidence seized from his person. Finding no error, we affirm.

Simmons' sole claim on appeal is that the district court erred when it concluded that Detective Joseph Capitano did not exceed the scope of a lawful frisk when he removed contraband from Simmons' pocket. We review the district court's factual findings for clear error, while reviewing its legal determinations de novo. United States v. Rusher, 966 F.2d 868, 873 (4th Cir. 1992).

Under the "plain-feel doctrine," an officer may seize nonthreatening contraband discovered during a protective Terry\* pat-down search if the pat-down was justified and the contraband's contour or mass made its identity immediately apparent upon touching it. Minnesota v. Dickerson, 508 U.S. 366, 375-76 (1993); United States v. Swann, 149 F.3d 271, 275 n.3 (4th Cir. 1998). Our review of the record discloses that Detective Capitano immediately identified the contraband as unlawful narcotics upon touching the item. Accordingly, we find no error in the district court's decision denying Simmons' motion to suppress.

We affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions

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\*Terry v. Ohio, 392 U.S. 1 (1968).

are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED